



[6450-01-P]

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. CR-001]

Notice of Petition for Waiver of Hill PHOENIX from the Department of Energy

Commercial Refrigerator, Freezer and Refrigerator-Freezer Test Procedure

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of petition for waiver and request for comments.

SUMMARY: This notice announces receipt of and publishes the Hill PHOENIX Inc. (Hill PHOENIX) petition for waiver (hereafter, “petition”) from the U.S. Department of Energy (DOE) test procedure for determining the energy consumption of commercial refrigerators, freezers and refrigerator-freezers. Through this notice, DOE also solicits comments with respect to the Hill PHOENIX petition.

DATES: DOE will accept comments, data, and information with respect to the Hill PHOENIX petition until **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by case number CR-001, by any of the following methods:

- Federal eRulemaking Portal: www.regulations.gov. Follow the instructions for submitting comments.
- E-mail: AS_Waiver_Requests@ee.doe.gov. Include “Case No. CR-001” in the subject line of the message.
- Mail: Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE-2J/1000 Independence Avenue, SW., Washington, DC 20585-0121. Telephone: (202) 586-2945. Please submit one signed original paper copy.
- Hand Delivery/Courier: Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L’Enfant Plaza SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

Docket: For access to the docket to review the background documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L’Enfant Plaza SW., Washington, DC, 20024; (202) 586-2945, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except on Federal holidays. Available documents include the following items: (1) this notice; (2) public comments received; (3) the petition for waiver; and (4) DOE rulemakings and waivers regarding commercial refrigeration equipment. Please call Ms. Brenda Edwards at the above telephone number for additional information.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Berringer, U.S. Department of Energy, Building Technologies Program, Mail Stop EE-2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Telephone: (202) 586-0371. E-mail: AS_Waiver_Requests@ee.doe.gov.

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC-71, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585-0103. Telephone: (202) 586-7796. E-mail: <mailto:Elizabeth.Kohl@hq.doe.gov>.

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA), Pub. L. 94-163 (42 U.S.C. 6291-6309, as codified), established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances. Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part B authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)). Part C of Title III provides for a similar energy efficiency program titled “Certain Industrial Equipment,” which includes commercial refrigerators, freezers and refrigerator-freezers and other types of commercial

equipment.¹ (42 U.S.C. 6311-6317)

Section 343(a)(6)(C) of EPCA (42 U.S.C. 6314(a)(6)(C)) directs DOE to develop test procedures to establish the appropriate rating temperatures for products for which standards will be established under section 342(c)(4), i.e., (1) ice-cream freezers; (2) commercial refrigerators, freezers, and refrigerator-freezers with a self-contained condensing unit without doors; and (3) commercial refrigerators, freezers, and refrigerator-freezers with a remote condensing unit. Other provisions of section 343(a)(6) provide DOE with additional authority to establish and amend test procedures for commercial refrigeration equipment. On December 8, 2006, DOE published a final rule adopting test procedures for commercial refrigeration equipment, effective January 8, 2007. 71 FR 71340. Title 10 of the Code of Federal Regulations (10 CFR) 431.64 directs manufacturers of commercial refrigerators, freezers and refrigerator-freezers to use Air-Conditioning and Refrigeration Institute (ARI) Standard 1200–2006, “Performance Rating of Commercial Refrigerated Display Merchandisers and Storage Cabinets” when measuring the energy consumption of those products. DOE established energy conservation standards for certain classes of commercial refrigerators effective January 1, 2012 (74 FR 1092, Jan. 9, 2009). The basic models included in Hill PHOENIX’s petition are subject to the applicable standards established in that rulemaking and are therefore required to be tested and rated according to the prescribed DOE test procedure, AHRI 1200-2006, as of January 1, 2012.

The regulations set forth in 10 CFR part 431.401 contain provisions that enable a person to

¹ For editorial reasons, upon codification in the U.S. Code, Parts B and C were re-designated as Parts A and A-1, respectively.

seek a waiver from the test procedure requirements for covered products. The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) will grant a waiver if it is determined that the basic model for which the petition for waiver was submitted contains one or more design characteristics that prevents testing of the basic model according to the prescribed test procedures, or if the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 431.401(f)(4). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 430.401(b)(1)(iii). The Assistant Secretary may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 431.401(f)(4). Waivers remain in effect pursuant to the provisions of 10 CFR 430.401(g).

II. Petition for Waiver

On December 1, 2011, Hill PHOENIX submitted a petition for waiver from the DOE test procedure applicable to commercial refrigerators, freezers and refrigerator-freezers set forth in 10 CFR 431.64. Hill PHOENIX requested the waiver for its refrigerated display merchandisers designed to display only non-perishable products refrigerated for customer convenience. This equipment is classified as commercial refrigerator, freezer, and refrigerator-freezer with a self-contained condensing unit and without doors (category viii of the applicable test procedure requirement set forth in the table at 10 CFR 431.64(b)(2)). The applicable test procedure for this equipment is ARI 1200-2006. Manufacturers are directed to use this test procedure pursuant to

10 CFR 431.64.

Hill PHOENIX seeks a waiver from the applicable test procedures under 10 CFR 431.64 on the grounds that its refrigerated display merchandisers contain design characteristics that prevent testing according to the current DOE test procedure. Specifically, Hill PHOENIX asserts that the merchandisers are not able to operate at the specified integrated average temperature of 38 °F. Consequently, Hill PHOENIX requested that DOE grant a waiver from the applicable test procedures, allowing the specified products to be tested at 50 °F, which Hill PHOENIX asserts is the lowest product application temperature.

The following basic models are included in the petition:

FBI FT FEA NFD NFO NFT OB SF

DOE makes decisions on waivers for only those models specifically set out in the petition, not future models that may be manufactured by the petitioner. Hill PHOENIX may submit a petition for waiver for additional models of commercial refrigerators, freezers and refrigerator-freezers for which it seeks a waiver from the DOE test procedure. In addition, grant of a waiver does not release a petitioner from the certification requirements set forth at 10 CFR Part 429.

IV. Summary and Request for Comments

Through today's notice, DOE announces receipt of Hill PHOENIX's petition for waiver

from the test procedures that apply to commercial refrigerators, freezers and refrigerator-freezers. DOE is publishing Hill PHOENIX's petition for waiver in its entirety pursuant to 10 CFR 430.401(b)(1)(iv). The petition contains no confidential information.

DOE solicits comments from interested parties on all aspects of the petition. Pursuant to 10 CFR 431.401(d), any person submitting written comments must also send a copy of such comments to the petitioner. The contact information for the petitioner is: Arnie Stephens, Research and Development Manager, Barker Specialty Products by Hill PHOENIX, 703 Franklin Street, Keosauqua, IA 52565. All submissions received must include the case number for this proceeding, CR-001. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author.

DOE does not accept telefacsimiles (faxes). According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: one copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Issued in Washington, DC, on January 30, 2012.

Kathleen B. Hogan
Deputy Assistant Secretary for Energy Efficiency
Energy Efficiency and Renewable Energy

December 1, 2011

Assistant Secretary for Energy Efficiency and Renewable Energy
U.S. Department of Energy

To Whom It May Concern:

Subject: Petition for Test Waiver as described in 10 CFR 431.401

Barker Specialty Products by Hill PHOENIX has several base models of refrigerated display merchandisers that operate significantly higher than the specified application temperatures for rating merchandisers in accordance with 10 CFR 431.62 and 431.64. These merchandisers are specifically designed and produced to only display non-perishable products that are refrigerated for customer convenience. The product displayed in these merchandisers are floral, wine and bulk produce that is not required to be refrigerated under any current food safety regulation. These products are slightly chilled primarily for customer convenience. There is some extension of product life by displaying it in a chilled space but it is not a requirement.

These merchandisers are designed specifically for these higher application temperatures. Many of the components in the merchandisers will not perform adequately at lower application temperatures. For example, the evaporator coils on these cases are smaller and designed to operate above freezing, the insulation in the case is thinner than what would be found in a medium temperature (38°F) application merchandiser, and the airflow is matched for the particular application. In many instances, the merchandisers do not have the capacity to meet the 38°F product temperature requirements. Requiring these merchandisers to achieve a 38°F integrated product temperature requires significant design changes to the merchandiser and results in a more expensive product. In addition, testing the merchandiser at the medium temperature rating is extremely unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data.

This petition is to waive the requirement to test the merchandisers at the rating temperature for medium temperature of an integrated product temperature of 38°F. The remaining test procedures will be followed and the energy usage and limits will be calculated based on current specifications.

1. The following basic models are included in this petition:
 - a. FBI
 - b. FT
 - c. FEA
 - d. NFD
 - e. NFO
 - f. NFT

- g. OB
- h. SF
- 2. These merchandisers are utilized only for non-perishable merchandise and operate at a higher product temperature than 38°F.
- 3. The test procedure requires these models to be tested at the medium temperature application rating of 38°F. This test is not representative of how the merchandisers are utilized in application.
- 4. Testing the merchandisers at this application rating increases the design and production costs of the case and is unrepresentative of its true energy consumption.
- 5. This petition is to waive the energy usage tests being conducted at the medium temperature application rating of 38°F. These merchandisers would be tested and the energy usage recorded in accordance with the remaining test procedures, however the application temperature rating would be an integrated average temperature of 50°F.
- 6. The case models above are designed and produced only for these higher application temperatures.
- 7. While there are a limited number of other manufacturers of similar merchandisers, it is not known if the design is specific to these higher temperature applications.

Very Respectfully,

Arnie Stephens
Research and Development Manager

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